

Worksession

Agenda Item #	3
Meeting Date	March 8, 2004
Prepared By	Linda S. Perlman Assistant City Attorney and Alfred D. Lott Public Works Director
Approved By	Richard M. Finn City Manager

Discussion Item	Stormwater Management - Drainage Problems on Private Property
Background	<p>The Council has been considering whether the City should undertake code enforcement actions with regard to drainage and stormwater runoff across private property lines that causes damage to an adjoining or downhill property.</p> <p>The Council has had several worksession discussions on this issue. On January 12, 2004, the Council heard a presentation from Robert Dejter, Code Enforcement Field Supervisor with the Montgomery County Department of Housing and Community Affairs, regarding Montgomery County's efforts to address drainage and stormwater runoff from one private property that adversely affects neighboring property. Mr. Dejter indicated that as Montgomery County does not have a statute dealing specifically with drainage water problems on private property, such disputes are handled as public nuisance complaints under Chapter 26, Building and Property Maintenance. The provision used by Montgomery County is in Sec. 26-2 of the <i>Montgomery County Code</i> and reads, in pertinent part, as follows:</p> <p style="padding-left: 40px;"><i>Public nuisance:</i> Any dwelling, dwelling unit, or nonresidential structure, or any part of any of them, that is:</p> <p style="padding-left: 80px;">...</p> <p style="padding-left: 40px;">(e) creating a condition that would or could result in substantial damage to another property."</p> <p>Before it will take action on stormwater runoff problems, Mr. Dejter indicated that Montgomery County requires: (1) a written complaint and supporting documentation of the problem from the complainant; (2) the owner of the property from which the stormwater runoff problem originates must have taken an action or changed a condition on the property that resulted in the runoff or drainage problem and such changed condition or action must have occurred no earlier than approximately 12 months before the complaint; and (3) the stormwater runoff/drainage problem must have caused damage to the complainant's property. After the complaint is investigated by County Code Enforcement and the allegations of the complaint are verified, then the violator generally will be given a violation notice and approximately 30 days to correct the problem. If corrective action is not taken, then a citation will be issued and adjudicated in the District Court of Maryland. Mr. Dejter indicated that although several hundred complaints might be received each year, not many citations had been issued. Montgomery County relies on the Code Enforcement Officer's investigation and the complainant's documentation and testimony to prove violations.</p>

	<p>Following this presentation, the Council indicated that it desired to further discuss this issue before the City proceeded to take on the enforcement of stormwater runoff disputes between private property owners. Although the City has adopted the Montgomery County definition of “public nuisance” as part of the City’s Property Maintenance Code, the City Attorney was asked to draft possible Code language to more specifically address stormwater runoff problems on private property.</p>
Policy	<p>The City presently only manages stormwater on public property and its flow through the City’s storm drain system. Neither the Takoma Park Code provisions on stormwater management nor the provisions on property maintenance provide any remedies specifically related to stormwater runoff disputes between owners of private property.</p>
Fiscal Impact	<p>If the responsibility for managing stormwater problems on private property becomes the responsibility of the City, there would be a fiscal impact. Rolling terrain exists throughout the City and there are hundreds of instances where steep slopes create stormwater problems. Consequently, the demand for stormwater problem solving would probably be significant.</p> <ol style="list-style-type: none"> 1. The City Engineer is basically a one person operation. He or she is responsible for all civil engineering activities in the City including stormwater management, street renovations, and traffic engineering. Recent Council direction will require the City Engineer to spend more time dealing with pedestrian/traffic safety issues. The demand to resolve stormwater problems on private property maybe so great that it could dominate the Engineer’s efforts. At the rate of \$150 per hour for on-site stormwater evaluations by a consulting engineer, the estimated fiscal impact could range from \$9,000 to \$18,000. 2. In addition, if a property owner did not act to remedy a violation, then enforcement action by the City would be required. Such action might involve issuance of municipal infraction citations or an action for injunction to require, for example, an uphill property owner who had increased or diverted the flow of surface or stormwaters to the detriment of the adjacent or downhill property owner to construct and maintain a drainage system. 3. The City would have to provide additional staff or funding to Code Enforcement or the Public Works Department stormwater budget and to the City’s legal budget in order to support this new service. The most likely source of the additional funding would be to increase the stormwater management fee which is how the City currently funds its stormwater budget. It is anticipated that the average annual cost for this new level of service would be approximately \$30,000. However, in reality given the amount of rainfall that the City experiences in any given year the cost for this new service could range from \$10,000 to \$40,000.
Attachments	<ol style="list-style-type: none"> 1. Proposed Code language - new Sec. 6-307 Property Maintenance Code–Stormwater Drainage Across Private Property Lines; Nuisance Declared. 2. January 12, 2004, “Presentation” cover form. 3. City Attorney memorandum dated December 4, 2003. 4. November 10, 2003, “Worksession” cover form.

	5. September 15, 2003, “Worksession” cover form.
Recommendation	The decision to provide storm drainage service/enforcement on private property is a policy decision which the Council should carefully consider. The City Engineers office and the Code Enforcement office are not in the position to add these additional responsibilities to their existing work load unless the city supplements their efforts with additional Staff or through a contractual arrangement. If the Council decides to pursue this new level of service it is strongly recommended that you consider a annual budget allocation of \$25,000 to \$30,000.
Special Consideration	

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